

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KEVIN AMBERS,

Plaintiff,

v.

HENRY RICHARDS *et al.*,

Defendants.

Case No. C05-5031RJB

REPORT AND  
RECOMMENDATION:

**NOTED FOR:  
JUNE 24<sup>TH</sup>, 2005**

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Before the court is defendant's first amended motion to dismiss or in the alternative for a more definite statement. (Dkt. # 18). Plaintiff has responded. (Dkt. # 22). Defendants have replied. (Dkt. # 21).

FACTS

Plaintiff alleges that on October 14<sup>th</sup>, 2004 he approached defendant Cathi Harris, Assistant Clinical Director, at the Special Commitment Center, asking her repeatedly if it was appropriate for staff to engage in "inappropriate behavior" while on state grounds. (Dkt. # 5, page 10). Plaintiff admits he attempted to get an answer to his inquiries several times. Defendant Harris excused

1 herself, and left the area. A short time later plaintiff was given a Behavior Modification Report,  
2 BMR, for sexual harassment and intimidation.

3 Plaintiff indicates in the complaint he had heard Ms. Harris and her supervisor, Rick Ramseth  
4 had been caught by a co-worker engaging in sex while on the Special Commitment Center grounds  
5 and he indicates that his questions concerned her behavior. (Dkt. # 5). Plaintiff was found guilty at  
6 his BMR hearing. He lost his job and privilege level. Plaintiff claims he was not allowed to call  
7 witnesses or that his witnesses were discouraged from attending his hearing, but he provides no  
8 connection between his claims and any named defendant. (Dkt. # 5).

9 He brings this action alleging violations of his First, Fifth Thirteenth and Fourteenth  
10 Amendment Rights. While he also attempts to bring a state claim, review of the complaint shows he  
11 is in fact asking this court to charge the defendants under state law with a state crime. (Dkt. # 5,  
12 page 2 § 2.2). The complaint is a rambling and disjointed 21 page document with attachments. The  
13 complaint does not clearly connect the conduct of any named defendant to the alleged violations and  
14 the complaint cross references by paragraph numbers.

15 Defendants bring the motion pursuant to Fed. R. Civ. P.12 b(1) and (6) and in the alternative  
16 ask for a more definite statement under 12 b(c). Defendants argue: 1) failure to set forth  
17 “jurisdictional facts” of a federally protected right, 2) personal participation, 3) qualified immunity,  
18 4) Eleventh Amendment, 5) standing to seek injunctive relief, 6), that 42 U.S.C. 1997 does not  
19 create a separate cause of action and, 7) supplemental jurisdiction should be declined.

20 Having reviewed the entire file and carefully considering the briefing the undersigned  
21 concludes defendant’s motion for a more definite statement should be **GRANTED**. The complaint  
22 in this case is in violation of Fed. R. Civ P. 8 (a). Having reached this conclusion the court should  
23 not address the other issues raised until a proper complaint is before the court.

#### 24 DISCUSSION

25 A court should dismiss a claim under Fed.R.Civ.P. 12(b)(6) if it appears beyond doubt that  
26 the plaintiff can prove no set of facts to support the claim that would entitle the plaintiff to relief.

27 Keniston v. Roberts, 717 F.2d 1295, 1300 (9th Cir. 1983), citing; Conley v. Gibson, 355 U.S. 41,

1 45-56 (1957). Dismissal for failure to state a claim may be based on either the lack of a cognizable  
2 legal theory or the absence of sufficient facts alleged under a cognizable legal theory. Balistreri v.  
3 Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as  
4 admitted and the complaint is construed in the plaintiff's favor. Keniston v. Roberts, 717 F.2d 1295  
5 (9th Cir. 1983). However, a plaintiff must plead factual allegations with specificity; vague and  
6 conclusory allegations fail to state a claim for relief. Colburn v. Upper Darby Township, 838 F.2d  
7 663, 666 (3rd Cir. 1988).

8 Plaintiff has submitted a confusing 21 page complaint that contains rhetoric without  
9 connecting facts or actions to named defendants. The court has determined that plaintiff alleges his  
10 First and Fifth Amendment rights were violated when he was given a BMR. He specifically indicates  
11 he is alleging a violation of his right to free speech. (Dkt. # 5, page 16 ¶ 7.2). However, plaintiff has  
12 failed to plead facts showing his speech was protected activity under the First Amendment.

13 Further, plaintiff has failed to allege facts showing that his race was a factor in any decision  
14 or action in the complaint. Therefore, his Thirteenth Amendment cause of action is deficient. (Dkt.  
15 # 5, page 18 ¶ 7.5 and 7.6). Finally, plaintiff alleges he was denied his right to call witnesses at his  
16 hearing but he fails to plead facts to show he had an interest in life, liberty, or property at stake in the  
17 hearing. Plaintiff also fails to plead facts showing any named defendant played any role in the alleged  
18 denial of witnesses. Plaintiff does not identify who conducted his hearing, or what steps he took to  
19 obtain witnesses.

20 The court is not ruling plaintiff cannot state a claim, however, the complaint now before the  
21 court does not set forth very many facts with any detail. The complaint does not link the alleged  
22 conduct of a person to the alleged cause of action. The defendants are correct in moving for a more  
23 definite statement. The defendants are entitled to a short plain statement of the claim and the relief  
24 sought. The complaint in this action does not meet the pleading requirements of Fed. R. Civ. P. 8(a).  
25 Accordingly, plaintiff should be ordered to file an amended complaint.

26 In submitting a new complaint plaintiff should inform the court who the defendants are and  
27 what their title is without any dissertation or rhetoric as to what rights he believed were violated by

1 that person. There should then be a facts section where plaintiff gives the details he alleges gives rise  
2 to his claims. The conduct plaintiff relies on in claiming liability on each defendant should be set  
3 forth in the fact section and the defendant identified with the facts. There should then be causes of  
4 action naming each defendant and the alleged constitutional violation. Finally, there should then be a  
5 statement of what relief plaintiff seeks.

6 CONCLUSION

7 The court should **DENY** defendant's motion to dismiss without prejudice, **GRANT**  
8 defendant's motion for a more definite statement, and order plaintiff to submit an amended complaint  
9 that complies with the direction given in this Report and Recommendation. A proposed order  
10 accompanies this Report and Recommendation.

11 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the  
12 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.  
13 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of  
14 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule  
15 72(b), the clerk is directed to set the matter for consideration on **June 24<sup>th</sup>, 2005**.

16  
17 DATED this 24<sup>th</sup> day of May, 2005.

18 /S/ J. Kelley Arnold  
19 J. Kelley Arnold  
20 United States Magistrate Judge  
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